

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## PRISONS (SUBSTANCE TESTING) BILL

*Wednesday 2 December 2020*

---

### CONTENTS

CLAUSES 1 TO 3 agreed to, one with an amendment.  
New clauses considered.  
Bill, as amended, to be reported.

---

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Sunday 6 December 2020**

© Parliamentary Copyright House of Commons 2020

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:**

*Chair:* MS NUSRAT GHANI

- |  |   |
|--|---|
| † Afolami, Bim ( <i>Hitchin and Harpenden</i> ) (Con)            | † Hunt, Jane ( <i>Loughborough</i> ) (Con)              |
| † Baker, Duncan ( <i>North Norfolk</i> ) (Con)                   | Jones, Mr Kevan ( <i>North Durham</i> ) (Lab)           |
| † Bradley, Ben ( <i>Mansfield</i> ) (Con)                        | Lake, Ben ( <i>Ceredigion</i> ) (PC)                    |
| † Brown, Ms Lyn ( <i>West Ham</i> ) (Lab)                        | Loder, Chris ( <i>West Dorset</i> ) (Con)               |
| † Butler, Rob ( <i>Aylesbury</i> ) (Con)                         | † Marson, Julie ( <i>Hertford and Stortford</i> ) (Con) |
| Carden, Dan ( <i>Liverpool, Walton</i> ) (Lab)                   | Olney, Sarah ( <i>Richmond Park</i> ) (LD)              |
| † Charalambous, Bambos ( <i>Enfield, Southgate</i> ) (Lab)       | † Webb, Suzanne ( <i>Stourbridge</i> ) (Con)            |
| Davies-Jones, Alex ( <i>Pontypridd</i> ) (Lab)                   | Adam Mellows-Facer, <i>Committee Clerk</i>              |
| † Frazer, Lucy ( <i>Minister of State, Ministry of Justice</i> ) |   |
| † Holden, Mr Richard ( <i>North West Durham</i> ) (Con)          | † <b>attended the Committee</b>                         |

## Public Bill Committee

Wednesday 2 December 2020

[Ms NUSRAT GHANI *in the Chair*]

### Prisons (Substance Testing) Bill

9.25 am

**The Chair:** Welcome to the Public Bill Committee on the Prisons (Substance Testing) Bill. Before we begin, I have a few preliminary announcements. You will all understand the need to respect social distancing guidance. If necessary, I will intervene to remind you. Note passing can no longer take place in a paper form; it has to be done electronically. The *Hansard* reporters would be most grateful if Members emailed any electronic copies of their speaking notes to *Hansard*, or just take a screenshot and send it over.

The selection list for today's sitting is available in the room and online. This shows how the selected amendments and clauses have been grouped together for debate. Formal decisions on amendments and clauses will be taken in the order in which they appear in the Bill. New clauses come at the end.

#### Clause 1

TESTING PRISONERS FOR PSYCHOACTIVE SUBSTANCES  
AND OTHER SUBSTANCES

*Question proposed,* That the clause stand part of the Bill.

**The Chair:** With this it will be convenient to discuss the following:

Amendment 1, in clause 2, page 3, line 35, at end insert—

“(7) In the Prison and Young Offender Institution (Coronavirus, etc) (Amendment)(No. 3) Rules 2020 (S.I. 2020/1077)—

(a) omit rule 2(3), and

(b) omit rule 3(3).”

*S.I. 2020/1077 added a new substance to the list of “specified drugs” in the Prison and YOI Rules. That list is no longer needed because of the changes made by the Bill and so this amendment revokes the S.I.*

Clause 2 stand part.

Clause 3 stand part.

**Mr Richard Holden** (North West Durham) (Con): It is a pleasure to serve under your chairmanship, Ms Ghani, and to introduce this Bill on behalf of my right hon. Friend the Member for Chesham and Amersham (Dame Cheryl Gillan), who cannot be here today. I thank Lorraine O’Shea from my right hon. Friend’s office, who has been invaluable in bringing this private Member’s Bill together.

Clause 1 allows Her Majesty’s Prison and Probation Service to test prisoners for all psychoactive substances, including any new compounds that emerge. It also allows prisoners to be tested for any controlled drug, pharmacy medicine and prescription-only medicine. It achieves that by using the definitions for those substances and medicines already set out in legislation, including the Psychoactive Substances Act 2016 and the Human Medicines Regulations 2012.

It is a feature of psychoactive substances that new substances appear regularly, with slight alterations to the chemical mixture. When that occurs, Her Majesty’s Prison and Probation Service has not been able to test for these new compounds until they have been added to the Prison Rules 1999 and the Young Offender Institution Rules 2000. The most recent example was scopolamine, a psychoactive substance added to the rules in October.

This clause will allow the drug-testing framework to respond quickly to test for new psychoactive substances, or any prescription-only or pharmacy medicines, without first having to amend the rules. Prisons and young offender institutions will be able to better plan for treatment services, identify those who should use them and, where appropriate, impose sanctions.

Amendments may still be made to the rules through statutory instruments to allow testing for substances that are regarded as harmful and which fall outside existing statutory definitions of controlled drugs, pharmacy medicines, prescription-only medicines and psychoactive substances. These are defined as “specified substances” in clause 1. Clause 2 amends the Prison Act 1952 to ensure that a substance cannot be listed as a “specified substance” in rules if it already falls within the statutory definitions of controlled drug, pharmacy medicine, prescription only medicine or psychoactive substance.

Clause 1(4) makes provision for the anonymised prevalence testing for medicinal products as well as controlled drugs, psychoactive substances and specified substances. “Medicinal products” is a wider category of substances than “prescription only medicines” and “pharmacy medicines” and is defined by reference to regulation 2 of the Human Medicines Act 2012. Having an express statutory basis for prevalence testing will provide a useful insight into trends in drug use and support healthcare providers in planning their services and tailoring their treatment programs in prisons and young offender institutions over time.

Clause 2 also sets out consequential amendments following the changes in clause 1. Clause 2 will allow the Secretary of State to make any necessary changes to the Prison Act 1952 in the event of any future changes in the Human Medicines Regulations 2012 or other legislation relating to human medicines. For example, if a substance definition that our Bill refers to were to be revoked in future, we could amend the Prison Act 1952 to include the definition or refer to alternative legislation and avoid any impact to Her Majesty’s Prison and Probation Service’s drug testing framework.

As we have discussed, the Bill adopts a general definition of psychoactive substances. That allows HM Prison and Probation Service to test for any psychoactive substances. In the past, substances considered psychoactive have been listed in the rules as specified drugs, in order to allow for testing. That is no longer required. It is therefore necessary for the Bill to remove the existing lists added to the Prison Rules 1999 and the Young Offender Rules 2000, as per our amendment. It is better for the statute book explicitly to remove statutory instruments that would otherwise have no effect. That is why we tabled the amendment, which is a minor and technical amendment, specifically in reference to scopolamine.

Scopolamine was added to the prescribed drugs list by statutory instrument in February, so that HM Prison and Probation Service could test prisoners for a psychoactive substance that had come into recent illicit use in our

prisons. Were the Bill to become part of the statute book, scopolamine would be covered by the new definition of psychoactive substances inserted into the Prison Act 1952 by clause 1 of the Bill. The SI laid in October would therefore become redundant, so the amendment removes it from the statute book.

Clause 3 confirms the short title of the Bill and makes provision for its coming into force. The clause also provides that the Bill extends to England and Wales only, as prisons are devolved in both Scotland and Northern Ireland.

**Ms Lyn Brown** (West Ham) (Lab): It is an absolute pleasure to serve under your chairmanship, Ms Ghani. What an honour to be considering a private Member's Bill this morning. It is a shame that the right hon. Member for Chesham and Amersham is not with us, but I know that the hon. Member for North West Durham will continue to take the Bill through the House most ably. He demonstrated his skill on Second Reading. The right hon. Member for Chesham and Amersham chose wisely.

The Bill is an important one, and Labour supports its core goal to improve the testing regime for harmful substances in prisons. Substance misuse in prisons is rife, and we are told that it fuels violence and health problems and remains a real barrier to rehabilitation. The physical and mental impact on prison staff, including those who work to provide healthcare and education, can be truly awful.

As the hon. Member for North West Durham said, the current system for enabling substances to be tested within our prisons is just not responsive enough. The drugs that are being produced change rapidly, as do the methods of smuggling them into our prisons. Removing the necessity to introduce secondary legislation every single time a new substance needs to be added to the testing regime is a necessary and proportionate change, which is of a piece with the broader changes made several years ago by the Psychoactive Substances Act 2016.

I served on the Committee for the 2016 Act. If we are being frank, we probably should have provided for this issue in that measure. However, it is very welcome to have a statutory basis for anonymous prevalence testing, so that prisons and healthcare staff, prison leaders and the Government can deliver a faster, more precise and more accurate understanding of what the problems with drugs are, and where they are within the prison system.

I have two brief questions about the drafting of the Bill, which I assume the Minister will be able to answer. I raised them quickly on Second Reading, but understandably at that point I did not receive a full response. As hon. Members will know, there are occasionally issues with the interpretation of the core definition of a psychoactive substance in the 2016 Act. This Bill would copy that definition into the Prison Act 1952. Are the Government confident that the definition is robust enough? Is there a risk that the general power to specify substances to be tested for in clause 47 (3A) of the Prison Act 1952 will still need to be used if these definitions fail? I have noticed that the consequential amendment 1 opts for amending the general power that I just mentioned, so that all controlled drugs—pharmacy medicine, prescription-only medicine, and psychoactive substances—are excluded.

An alternative step would be to repeal subsection (3A) entirely. It might be that the decision to amend it, rather than repeal it, reflects a judgement that the definition of a psychoactive substance could turn out to be inadequate, and that a power to set out specific substances to be tested will still be needed. However, if that amended power in subsection (3A) were ever used in the future, it would still have to make use of an amendment to the prison rules through secondary legislation. That process would be no faster than the one that currently exists. I do not say so to oppose a general power to specify substances remaining in legislation after this Bill hopefully becomes law. However, I would welcome further explanation. Is the general power simply there in case the other definitions drawn from the 2016 Act and the Human Medicines Regulations 2012 fail, or is it there for another purpose? Is another purpose envisaged? I am quite happy to take a note on this, electronically or otherwise, after the sitting. I have no intention of causing any difficulties, but these are issues that have been flagged to us, and we would be grateful for an explanation.

Two of the largest issues where we need greater clarity about the Government's approach in response to this Bill are addressed by the new clauses that I will come on to introduce. I can see that I am likely to have a majority when I press them to a vote. Before we come on to those new clauses, I want to raise a few other questions and issues which it would be helpful for the Minister to address. The most important question for the Government in relation to this Bill is what are they going to use it for? Once the Bill has provided the power to rectify the problems with the testing regime for Spice and other novel psychoactive substances—as it is very early in the morning and I am a bit tired, I hope Members will accept that I will say “NPS” from now on—how are the Government going to use that power to create a healthier, more therapeutic, and more rehabilitative environment in our prisons?

Something that could result from more accurate testing is more widespread use of punishment for people found to have misused drugs in custody. As I said on Second Reading, this is a difficult issue, because sometimes the punishments that are used could make it harder for people to stop using drugs, rather than easier. Would the Minister tell us more about Government's understanding of this? Has there been, or could there be, a review of the impact that different types of disciplinary intervention have had on people who are found to be misusing drugs in custody?

The Minister—rightly, in my view—has been looking keenly at the different ways that our courts can respond to offending in the community in a way that solves problems and does not make problems that clearly exist worse. I hear that next year we are going to be considering some of those welcome changes in the sentencing White Paper. In my view, it should be no different when people break the rules in prison. People in prison have had their liberty taken away as a punishment appropriate to their crime and, given the added challenges of living in prison and all that that brings, it is more, not less, important that the disciplinary actions taken solve problems and create the conditions for rehabilitation, not reoffending. The punishments announced in 2015 by the then Justice Secretary included bans on family visits, 21 days confined to cells, removal of TV access and more. We know that

[Ms Lyn Brown]

the use of drugs in prison can be, or is often thought to be, caused by inactivity, loss of hope and complete and utter desperation.

I worry that greater use of at least some of those punishments might inadvertently lead to people wanting to take more drugs to get themselves mentally out of the situation—even temporarily—that they find themselves in. I cannot imagine what it would be like to be locked up. I cannot imagine what it would be like to be locked in a cell—I am completely claustrophobic and antisocial—with someone I did not like for 23 hours a day. I could imagine in those circumstances, if I were a little bit different, wanting to get out of there in my head, at least temporarily.

**Rob Butler** (Aylesbury) (Con): Will the hon. Member give way?

**Ms Brown:** Can I just finish this, because it is not written down and otherwise I will lose my train of thought? This is something where some of us use alcohol. If we have had a rubbish day—not that it ever happens in this place, obviously—we go home for a very large gin and tonic. That in and of itself is almost a way of trying to come down from the stresses we have had and cope with them. Some people use alcohol in much worse ways than that and do not have it under control. All I am trying to say is that we should try and walk for a few minutes in the moccasins of those who find themselves imprisoned and are struggling mentally with all that being in prison means—being separated from their families and children and having their liberty constrained.

**Rob Butler:** Out of an abundance of caution, I declare that prior to my election I was a non-executive director of Her Majesty's Prison and Probation Service. Notwithstanding what the hon. Lady has just said, does she accept that there is a real scourge of drugs in our prisons and that we must clamp down on them and not do anything to encourage their use? I entirely agree that rehabilitation is the right way to proceed but, equally, nothing must be done to encourage those who seek to bring drugs into prison, create an illicit economy and make the problem much worse.

**Ms Brown:** I absolutely agree and I am very grateful to the hon. Gentleman, especially with the knowledge that he has, for giving me the opportunity of making myself abundantly clear. Those who bring the trade into prisons, who put at risk the lives and wellbeing of our prison staff and prisoners should feel the full penalty of the law. I have no doubt about that at all.

What I was trying and obviously failing to do was to get us to put ourselves in the mind of the prisoner who is taking this stuff and understand that in many ways it is logical to want to free oneself mentally, even just for a few hours, from some of the stresses that people have to endure when there are in prison. The hon. Member for Aylesbury is absolutely right that the full weight of the law should be felt by those who are peddling this insidious, evil stuff in our prisons and taking advantage of those who are most vulnerable. They are completely and utterly despicable. I do not think I could make myself clearer.

9.45 am

I would be really grateful if the Minister might say something about the Government's understanding of the efficacy of the forms of discipline that are currently used for those who misuse drugs in prison. Is any work going on that might improve them? Obviously another way of intervening in the lives of those who are misusing NPSs in our prisons is to ensure that they get into effective treatment. There is often a medical problem at the heart of the difficulties that requires a therapeutic solution.

I will say more about that issue when we come to the new clauses, which I know will be accepted and cheered from the rafters, but for the moment let me focus a little on the important issue of transitions from community into custody, and vice versa, and from prison to prison. The Government's statistics on that, contained in the "Substance misuse treatment in secure settings" publication, recognise only two pathways into treatment.

The first is after coming into prison from the community. We know that 90% of people who come into prison from outside and who go on to access treatment are into the treatment programme within three weeks, and 61% access it immediately. That sounds to me like a good statistic, but among people who are moving from one secure setting to another the numbers are a little worse: 41% of those who eventually access treatment after a transfer took more than three weeks to do so, which cannot be good, and just 15% started treatment immediately after their transfer. There is clearly a problem, and I really would like to hear from the Minister what she feels can be done to improve things.

**Bambos Charalambous** (Enfield, Southgate) (Lab): I had the pleasure of visiting HMP Cardiff a couple of years ago with the Welsh Affairs Committee and the Justice Committee. That prison was getting prisoners from Bristol visiting them who were under different regimes—under a different nation's schemes. That had an impact on the prisoners from Bristol and other areas. Does my hon. Friend agree that there needs to be a more joined-up approach in dealing with this?

**Ms Brown:** I absolutely do. It is quite clear that once someone is on a treatment programme it needs to continue seamlessly, because we all want people, when they leave prison and go back into our communities, to be able to do so free from drugs and addiction, and to start a fresh life. My hon. Friend is right, and I am grateful to him for bringing that to our attention.

I gently suggest that the statistics, and Government policy more broadly, might be improved if we stop pretending that prisoners do not start taking drugs while in prison, rather than always going into prison with an addiction. That is the truth of it. The whole system at the moment seems to be geared to discovering who has a pre-existing dependence on drugs and ensuring that they are in treatment, which is good. Do not get me wrong, that is essential, but for drugs such as spice, which has been very common in prisons, it is not the whole story.

There is a third pathway to treatment that we need to ensure is available: a pathway for those people who did not have a drug problem when they entered prison but who, tragically and unacceptably, acquired one while

inside. They are the people the system is failing most—the people for whom the boredom and difficulties of prison life are alleviated by short oblivion through illicit drugs obtained inside. I am genuinely hopeful that the Bill will enable treatment for those people. If it does, that will be a massive benefit to communities and families.

I will quickly explore one other issue. The transition between custody and community is often a revolving door, especially for those with drug abuse problems. It may be especially important for spice users. It is very evident that spice is disproportionately used by two populations: prisoners and rough sleepers. We know from last week's Public Health England substance misuse statistics that in 2019 almost half of those entering treatment for misuse of an NPS had a housing problem—the highest proportion for any category of substances. I suspect that if we accounted for those who use spice but who are not in treatment as well as for those who are, the proportion with a housing problem would be even higher. It is incredibly difficult to hold down a job, maintain positive relationships and a family life, and to keep the mind and body healthy while living on the street. That contributes to higher levels of imprisonment among those who sleep rough.

Homelessness for prison leavers, and what the charity Nacro calls cell, street, repeat, is a priority for us, and I am led to believe that it will be a priority for the Government to reduce reoffending rates in coming years. However, we need to understand how these issues are connected; how many people come into prison with a history of rough sleeping and associated use of spice in a year; how many receive treatment for substance misuse while inside; how many are still accessing spice or other harmful substances while they are inside; how many of these people, when released, go straight back to rough sleeping; and how many are going straight back to spice use if they managed to get clean inside. I hope the Minister will offer to take this issue away and consider whether there is a need for further research, which the Ministry could commission, and how it might best be achieved.

The other important transition is when people leave prison. We need to ensure that leaving prison means starting a new, changed life. It is good for the whole of our community that prisoners, when released, do not come out and reoffend. It is also important for the prisoner that they get a true second chance. Substance misuse treatment is a massive part of ensuring that that can happen. We need to ensure that information about people's needs travels with them as they leave prison and that treatment is immediate and consistent when they arrive in the community.

There is, unfortunately, little point in people getting clean or stable inside prison if they immediately relapse when they are out, without enough support, in the chaos and confusion of the outside world again. In fact, as we know, after release is the most dangerous time for those using illicit drugs, with appalling proportions of overdose deaths occurring in the first few days after leaving prison, just when we are wanting people to have a sense of hope and rebirth. A Norwegian study found that 85% of all deaths in prison leavers in the first week after release were due to overdoses. A US study found that the risk of an overdose death was 12.7 times higher for a prison leaver in the first two weeks after release from the general population.

Most of these deaths after leaving prison are the result of opiate use—heroin, or even more, drugs such as fentanyl—rather than an NPS. People in prison with an opiate dependence are generally on a regulated dose of a replacement drug as a medication, but when they come out, if they do not have immediate access to continue that treatment, they turn to the black market. At that point, much higher and less reliable doses are sold, which can quickly overwhelm the body, and people die. So getting transitions from custody to community right is a matter of life and death for some, and an essential part of treatment.

A few weeks ago, I met with some amazing NHS staff who work with armed services veterans in custody at HMP Wandsworth. I was delighted to hear that the staff in the substance misuse team leave the prison when those in their care are released, and go with them to their first appointment for community treatment. That is exactly the kind of integrated working that we need, but we all know that it is far from universal.

Can the Minister tell us more about what the Government are doing to improve treatment through the gate, following the recommendations in the report from the Advisory Council for the Misuse of Drugs on custody to community transitions last year? I fully appreciate that she is unlikely to have detailed answers to all my questions at her fingertips, but I think that we, as parliamentarians, could do with them to help to design and monitor effective policy on issues that mean enough to us that we are sat here this morning.

This is an excellent Bill, whose purpose we support, but if it is not accompanied by effective, well-resourced Government policy its benefits will be limited. I am fairly certain that the right hon. Member for Chesham and Amersham would not be impressed by that at all. I will say more when we come to the new clauses.

**The Minister of State, Ministry of Justice (Lucy Frazer):**

It is such a pleasure to serve under your chairmanship, Ms Ghani. I will not detain the Committee long on the main points, but I will respond to the points that the hon. Member for West Ham raised. I, like others, give my wholehearted support to my right hon. Friend the Member for Chesham and Amersham for introducing this very important Bill, and to my hon. Friend the Member for North West Durham for acting as its sponsor on her behalf. I commend the excellent work that my right hon. Friend has done in preparation for the Bill, notwithstanding that she has been unable to participate in these proceedings.

Having the privilege of being the Minister responsible for prisons, probation and rehabilitation, I am acutely aware of how necessary the Bill's provisions are. As the hon. Member for West Ham said, drugs fuel crime both in and outside prison. Moreover, new drugs are constantly emerging on to the market in prison, and criminals are tweaking the chemical compounds of existing psychoactive substances to avoid detection. The Bill ensures that drug tests are responsive to the latest challenges in prisons and young offenders institutions.

The Bill will future-proof the drug-testing framework by adopting the broader definition of psychoactive substances, prescription-only medicines and pharmacy medicines, and it will enable our prisons to start testing more immediately for new drugs substances. More than that, it will enable us to identify new and emerging trends and therefore react quickly to changes in drug

[Lucy Frazer]

use by adjusting the relevant security measures to find specific drug types or the appropriate medical response during an emergency.

There is also the issue of identifying prisoners or young offenders with ongoing drug problems. The provisions in the Bill will enable Her Majesty's inspectorate of prisons to have a better understanding of which individuals are misusing drugs and therefore to ensure that they get the appropriate treatment, as well as providing evidence of what is possible in terms of prevention.

We have a multifaceted approach to tackling drugs, and the Bill will enable us to continue to enhance our ability to tackle the scourge of drugs in prisons. I am grateful to my hon. Friend the Member for North West Durham for taking the Bill through the House, and to my right hon. Friend the Member for Chesham and Amersham for introducing it.

I will deal with a few of the points that the hon. Member for West Ham raised. She put forward a range of issues, and I will deal with the largest ones. She asked whether we were satisfied with the definition of psychoactive substances. I would like to assure her that we are content that the Psychoactive Substances Act provides HMPPS with a sufficiently broad definition to allow for testing of any new or existing psychoactive substances that may be used in prisons now or in the future. Of course, it is theoretically possible that a substance will fall outwith the definition in the future, so the Bill is drafted to future-proof drug testing in the case of any such eventually. However, that is not an eventuality that we anticipate at this time.

10 am

The hon. Lady asked what we will use the evidence we gather for. The key objective of the mandatory drug testing programme is to provide a means of identifying prisoners with ongoing drug problems to ensure that they are offered the appropriate treatment, and I would like to detail some of the work that we are doing on that. However, it is also right, as highlighted by my hon. Friend the Member for Aylesbury, who has such experience, that we need to tackle those who traffic, distribute and use illegal and illicit drugs, and prison governors should have appropriate sanctions available to them to discourage such offending. The hon. Member for West Ham is right that we need to treat people with drug use, but prisons must take a balanced approach that is consistent with that, and it is important that they have the tools available to them in appropriate places.

**Bambos Charalambous:** The Minister mentioned having a multifaceted approach to substance abuse in prison. A couple of years ago her predecessor mentioned that there was going to be a £10 million investment in scanners and other equipment to detect drugs going into prison—that is the other side of the equation. Could she give us any updates as to what the Government are doing on that? I am sure that is something we would all be interested in hearing about, because we want to make sure that drugs do not get into prisons in the first place.

**Lucy Frazer:** I am pleased that the hon. Gentleman has raised that point. As he repeated, we do have a multifaceted approach, including limiting the supply—the

measures he identified are to do that—limiting demand and providing treatment. He is right that we did a pilot programme in 10 prisons, and as a result of that and other work, we have put forward a £100 million security package, which includes the airport scanners to detect drugs that have been ingested before being brought into prisons. We also have enhanced gate security for visitors and staff, we have mobile phone blockers and we have beefed up investment in the investigation of crimes, so that we can bring people to justice if do the things the hon. Member for West Ham talked about so passionately. We need to stop the crime of supply within our prisons.

The hon. Member for West Ham rightly focused on how we limit demand and actually treat people in our prisons. We have a number of initiatives on that. She will know about Holme House—our first drug recovery prison. It is a £9 million project jointly funded by the Ministry of Justice and the Department of Health and Social Care. I am pleased to say that that programme will be evaluated early next year; the early signs are good, but the formal evaluation will take place next year. We also have that on a small scale in a number of prisons. We have enhanced drug-free wings. The hon. Lady rightly says that we should not be punishing and that we should be encouraging, and these drug-free units encourage and incentivise people to live a drug-free life. That is something we are very committed to increasing.

Treatment is very important, as the hon. Member for West Ham mentioned, and we need to help people get on treatment programmes. She rightly said that 90% of people coming into prison, where they are on those programmes, do have access to treatments within three weeks. In fact, 53,193 adults accessed drug and alcohol treatment services within prisons and secure settings between 2018 and 2019. I am pleased to say that 27% of those who were discharged after completing their treatment were free of dependence. The programmes that we are putting in place, having detected people who have problems, are therefore working, and I am pleased to say that that figure is an increase from the 24% who were successfully free of drugs two years earlier.

The hon. Member is right to point out that people sometimes turn to drugs in prison, when they have no hope and not much else to do. That is why we are committed to ensuring that we increase purposeful activity that will get people jobs when they come out. As evidence of that, she will know about our £2.5 billion spending programme for prison builds. We are absolutely committed to providing spaces where people can do good work and have good education in prisons.

Of course, we need to help those who unfortunately become addicted in prison. I do not shy away from the fact that that happens, but the measures in the Bill and all the other measures that I have identified will help us do that.

The hon. Member rightly talked about rough sleepers, and the link between them and prison. Around 60% of rough sleepers have been in prison in the last year, so there is a clear correlation between offending and homelessness. I have spoken previously about the close work that my Department is doing with the Ministry of Housing, Communities and Local Government to ensure that we take people out of rough sleeping and into homes. That will have an impact on turning around the lives of those people who would otherwise come into our institutions.

In the spending review, the hon. Member will have seen the commitment to £237 million that the Prime Minister announced for accommodation for up to 6,000 rough sleepers. She will also have seen a further £144 million for associated support services and £262 million for substance misuse treatment services, which, when fully deployed, are expected to help more than 11,000 people a year. The Ministry of Housing, Communities and Local Government, through our joint work, is not only taking people off the street, but giving them the treatment they need for their addiction. That spending is a 60% increase on the 2019 SR.

The hon. Member talked about other transitions into the community and between prisons. She is right to identify those points. We are already doing a significant amount of work on transitions into the community. She mentioned the important work that is being done in Wandsworth. That is not one of our RECONNECT programmes, but she will know that we have a RECONNECT service that the NHS is rolling out across the country. That is doing exactly what she identifies: ensuring that those who leave prison engage with community health services and supporting them to make that transition easier. Having spoken to the NHS and the Department of Health and Social Care regularly, I know they are committed to rolling that out in the coming years, in full, everywhere and to every prison in the country.

I agree that there is more work to do on transferring between prisons. That relates to healthcare, NHS records and the work that we need to do in prisons, but we are committed across the board to joining up the prisoner journey, not only in healthcare, but in other areas such as education.

The hon. Member mentioned naloxone. That point rightly comes up often, because it is important that, when we release prisoners who are addicted, there are no drastic consequences. Public Health England monitors the number of eligible prisoners who are given naloxone. Currently, 17% of those who have an opiate dependency get naloxone, which is up on previous years. I recognise that it could be more and I know that PHE is doing a piece of work at the moment to monitor performance in relation to take-home naloxone across all prison establishments and to identify best practice. I have spoken to them and they have an ambition that everybody will get it.

I hope I have addressed the hon. Member's points. The Government are pleased to support the Bill that my right hon. Friend the Member for Chesham and Amersham promoted and that my hon. Friend the Member for North West Durham introduced today, and I commend it to the Committee.

**Mr Holden:** I thank hon. Members who have taken part today, and I pay tribute to my hon. Friend the Member for Hitchin and Harpenden, who tried to introduce the measure in a previous Session as a ten-minute rule Bill. It did not quite reach Committee stage, but we are rocking on. I hope we can keep it going today. I thank the hon. Members for West Ham and for Enfield, Southgate.

**Ms Brown:** I have been remiss, because I have not made it clear that I intend to move my new clauses. The hon. Gentleman might want to wait to thank me until I have divided the Committee several times. That is just a little suggestion.

**Mr Holden:** I will wait until later to heap praise on the hon. Lady.

Some important points have been raised by Members of different parties, particularly my hon. Friend the Member for Aylesbury, who has brought his expertise to bear today. I know he does not often speak outside Prime Minister's questions, but I am glad he could grace us with his presence.

*Question put and agreed to.*

*Clause 1 accordingly ordered to stand part of the Bill.*

## Clause 2

### CONSEQUENTIAL AMENDMENTS

*Amendment made:* 1, in clause 2, page 3, line 35, at end insert—

“(7) In the Prison and Young Offender Institution (Coronavirus, etc) (Amendment) (No. 3) Rules 2020 (S.I. 2020/1077)—

(a) omit rule 2(3), and

(b) omit rule 3(3).”—(*Mr Richard Holden.*)

*S.I. 2020/1077 added a new substance to the list of “specified drugs” in the Prison and YOI Rules. That list is no longer needed because of the changes made by the Bill and so this amendment revokes the S.I.*

*Clause 2, as amended, ordered to stand part of the Bill.*

*Clause 3 ordered to stand part of the Bill.*

## New Clause 1

### ASSESSMENT OF THE EFFECTS AND VALUE FOR MONEY OF THIS ACT

“(1) The Secretary of State must prepare an assessment of the value for money of the provisions of this Act in achieving their objectives.

(2) That assessment must consider—

- (a) the extent to which the Act is achieving its objectives;
- (b) the number of tests conducted;
- (c) the number of positive results;
- (d) the number of novel psychoactive substances found;
- (e) the number of prescription-only substances found;
- (f) the timeliness of updates to the testing regime when new substances are introduced into prisons;
- (g) the amount spent on testing;
- (h) the net effects on expenditure on the treatment of substance misuse;
- (i) the effects of this Act on value for money in substance testing in prisons.

(3) A report on the assessment must be laid before Parliament no later than one year after the Act comes into force.”—(*Ms Brown.*)

*Brought up, and read the First time.*

**Ms Brown:** I beg to move, That the clause be read a Second time.

**The Chair:** With this it will be convenient to discuss new clause 2—*Reports by the Advisory Council on the Misuse of Drugs*—

“(1) The Advisory Council on the Misuse of Drugs must make biannual reports to Parliament on substance testing in prisons.

(2) Each report under this section must include assessments of—

- (a) the number of substances that have been tested for;

[The Chair]

- (b) which substances have newly appeared in prisons, and in what quantities;
- (c) the speed at which novel substances are being accounted for by the testing regime;
- (d) the effects of the provisions of this Act on the health of prisoners, including any effects on numbers of suicides or serious self-harm events in prisons.

(3) Any report under this section may contain recommendations for action they might have for healthcare providers in prisons, HM Prisons Service or any other public body relating to substance testing in prisons.”

**Ms Brown:** New clause 1 would require the Government to publish an assessment of the impact and value for money of the Bill within a year of its coming into force. I hope the Bill will increase the speed at which new psychoactive substances are identified in the prison system, and I hope the system will be able to identify quickly where medicines are being misused before that leads to harm. I hope that more people who need treatment for their drug problems will be identified, and that access to treatment will therefore improve. I hope the performance and value for money of the testing provider will improve, because it has a new, clearer mission and renewed scrutiny from the Ministry and Parliament.

We all hope there are results, but whether the benefits of the Bill are realised will depend on policy decisions and their implementation by both the Prison Service and the outsourced testing provider. I hope the Minister will say something about that, particularly about the value for money of the existing contract and what is happening to ensure that the testing service provided will be fit for purpose by the time the Bill comes into force. For me, the most important aspect of this is ensuring that treatment improves, because we know there are currently failures in the system.

The most recent data show that 11% of people receiving substance misuse treatment in prison said they had a problem with NPSs. For many, they will not be the only substances they are misusing. That proportion has been rising; it was just 5% in 2015-16, but, given the very high estimates for use in some prisons, it is probably reasonable to expect that the numbers of NPS users in treatment will need to increase further.

10.15 am

Those figures suggest that currently, spice users may be disproportionately unlikely to be in treatment; as we know, some evidence suggests that around one third of those misusing drugs in prison last year were NPS users. Given that the tests have been inaccurate, the true proportion could be even higher. All that suggests that treatment rates for NPS in prisons are significantly lower than they need to be. In the community at large, just 0.8% of those known to the national drug treatment monitoring system had an NPS problem last year.

That is concerning, because it raises the possibility that there may not be the knowledge or established treatment options available for people leaving custody across the country. I would like to hear what recent assessments the Government have made of the proportion of NPS users in prison who are in treatment, what plans the Government have to improve access to treatment for

NPS users on the basis of the Bill, and what plans are in place to ensure that NPS users leaving custody have good access to treatment in the community.

The potential for a significant improvement in monitoring treatment and outcomes is there. Passing this Bill will be a good prompt for the Government to ensure that they provide the resources required for that to happen. If the Minister will commit to making a written statement on these matters in due course, after the Bill has commenced and enough time has passed for an assessment to be made, I will happily withdraw this new clause.

New clause 2 would require the Advisory Council on the Misuse of Drugs, as an expert body that has the central role in advising us on all issues relating to substance misuse, to publish a report to Parliament every six months on the substances that are getting into our prisons and their effects, the adequacy of the testing regime and any recommendations it might have as a result of its findings.

The Bill would remove the requirement for the Government to involve Parliament in the process for adding new substances to the testing regime. As a means to improve the responsiveness of testing, that is welcome, but it reduces the number of opportunities for and the level of scrutiny that we can apply to drug testing and to the way drug testing is used.

I believe we need to find a way to remedy that potential lack of transparency and scrutiny and to ensure that the results of anonymised prevalence testing are not kept as a secret for prison governors, HMPPS, managers and so on. We need to make maximum use of this information as a source of understanding of what is going on in our prisons, what is going wrong and how we might fix it.

On Second Reading, I raised the fact that both the branches and the national organisation of the Professional Trades Union for Prison, Correctional and Secure Psychiatric Workers—the POA—are currently denied access to results of the prevalence studies that already happen. I suspect that ensuring that staff know what substances were getting in, and what their effects are, would be helpful in improving responses to incidents. If there are regular, transparent reports, that will also help the prison system as a whole to respond to problems proactively, even if they have not yet shown up locally. It will aid the Justice Committee and external watchdogs such as Her Majesty’s inspectorate, independent monitoring boards and the prison and probation ombudsman to perform their essential work to improve the prison system.

Knowing how many prisoners are affected by the misuse of substances would also be helpful to probation services and local authorities, which will be responsible for meeting people’s needs, including their need for substance misuse services, once they are released. If we do not know what those needs are, how can we put plans in place to ensure that the right treatment will be accessible as soon as it is needed and where it is needed?

As we have heard, the Bill extends the testing regime to cover prescribed and pharmacy medicines that can be misused. On Second Reading, I raised the need to ensure that the results of testing are shared with healthcare partners, because understanding what substances are out there will help them to prioritise resources and ensure that the right training is in place. We also need to ensure that prisoners who test positive for a substance

are not penalised if they have a genuine medical need, but that their need is recognised and properly and adequately responded to. Sometimes, people who cannot access the right healthcare quickly resort to self-medication, even if they do not have a legal prescription or they risk their health in doing so. That happens with vulnerable people in the community and, as we know, in prison.

Timely and transparent reports on the outcomes of prevalence testing would keep us informed about another essential aspect, which is how illegal drugs get into our prisons in the first place. As my hon. Friend the Member for Enfield, Southgate said, there has finally been some progress on that in recent years as a result of new internal body scanners, along with extra staffing and metal detectors, being introduced at the prisons with the largest number of people moving in and out regularly. Obviously, we hope that progress continues but, again, we need to do more than hope. If we had a clear basis for monitoring where different substances are getting in, and if regular reports were being published, it would help us to ensure that there was accountability in the system to drive that progress forward.

The Minister will know that there are calls for further investment in technology to shut down routes into prison. Devices are available to prisons to detect packages being smuggled within the body, but anything that can be concealed underneath or within clothing can be found only in a manual search. That is particularly difficult with drugs such as spice that can be soaked in sheets of paper or an extra layer of clothing and transported into prison that way. Although the technology available has significantly improved, it can be improved further.

One option is millimetre wave scanners, which hon. Members may have experienced at many UK airports. I am told that they can detect hidden items more accurately than a manual search. They can reduce the close contact required and possibly make visiting more comfortable for law-abiding family members. In a written parliamentary answer, the Minister told me that the Government do not currently believe that the scanners “meet...operational requirements”, but I would like to hear more about what the flaws are and whether it is rather a cost-benefit issue.

Finally, it would be remiss of me not to mention the pandemic that is still raging all around us. One of the consequences of covid, I understand, is that the mandatory drug testing programme was shut down during the first wave. Another consequence is that two of the biggest routes for drugs into prisons—on prisoners as they enter, or on prison visitors—were, and are, heavily restricted.

Surely, there must be lessons to be learned from whether access to harmful substances has or has not reduced, which should tell us something helpful about targeting efforts to shut down access to drugs in future. Likewise, we should be able to learn lessons about the connection between mandatory testing and treatment, and between testing and disciplinaries, from the extraordinary period we are in. I say gently that I do not think the Minister engaged with that point on Second Reading, so I am really hoping that today she is enthusiastically wanting to say more.

**Lucy Frazer:** The hon. Member for West Ham has highlighted two matters in her amendment, both of which relate to reporting. I am very grateful for her having raised these very important matters, but I would

like to reassure her that the amendment is not necessary, because sufficient procedures are already in place to measure and record what work will be done.

I would like to highlight, as the hon. Lady has, that making sure treatment is available is critical, and the first step is this one: identifying what substances are out there. The second step is identifying those people who we need to help, and the third is to give treatment. I hope that in the points I raised in response to her earlier speech, I have identified the considerable measures that we are taking to support people in their treatment, including the significant sums we are giving to rough sleepers—of course, there is an overlap there with prison leavers—and the RECONNECT service that the NHS links up with those treatments within prison and in the community.

I would like to go through the substance of the amendment. Through proposed new clause 1, the hon. Lady is seeking to expand the current scope of reporting by obligating an assessment of value for money after a year, so I will identify the structures that are already in place. As I said, the key objective is to ensure that people are identified, so that they can get treatments, and the effectiveness of that objective is continually reviewed as part of the national prison drugs strategy, which we published in April last year.

The Department also released an annual assessment, with accompanying statistics, as part of HMPPS's annual digest. This provides a number of the items that the hon. Lady has enumerated in her amendment, including the number of tests conducted, the number of positive tests, and the number of psychoactive substances found. Furthermore, we believe that the contract for providing the drug testing service is effectively managed and reviewed by operational and commercial teams through regular formal contract meetings. To understand the capabilities of the various testing providers, HMPPS has undertaken extensive market engagement with potential suppliers, and it will do so again during future contract tendering processes.

In relation to the specific points the shadow Minister made about value for money, I can reassure her that the provisions in the Bill would contribute to value for money through drug testing in prisons and ensuring that complete information is routinely gathered relating to the misuse of substances in custody. This, as I said, will enable us to make the right operational responses, as well as ensure that we get the right interventions. I believe that there is scrutiny for drug testing in prisons, supported by existing processes, and we should not rush into legislating on this issue.

I would, of course, be happy to write to the hon. Lady when the annual digest is published—I believe the next one is due in July—to draw her attention to those matters, so that she gets that material as quickly and speedily as possible. Of course, I am always happy to engage with her when she has questions, so that we can resolve any issues that she feels have not been fully dealt with. I ask her to withdraw new clause 1.

10.30 am

In new clause 2, the hon. Lady is asking that the Advisory Council on the Misuse of Drugs make biannual reports to Parliament on substance testing in prisons—that is quite similar to new clause 1. As I have explained to

[Lucy Frazer]

the Committee, the effectiveness of drug testing is continuously reviewed and the contract in which it sits is already scrutinised.

Officials at the Advisory Council on the Misuse of Drugs have advised us that the council is not set up for the type of role proposed in the new clause, which appears to be about reporting on the operations and performance of the substance testing system. The council's role is to provide independent science advice to the Government. That may involve, for example, synthesising advice based on evidence collected on misuse and societal harms. Its role is not to report on the objectives of specific drug testing programmes. I can reassure the shadow Minister, however, that the ACMD already has a role in making recommendations for action, but more broadly, under its role in the Misuse of Drugs Act 1971. The new clause would broaden those functions beyond their current scope.

I will address a few of the specific points that the hon. Lady made and I hope that I can alleviate some of her concerns. She identified and mentioned the significant investment that we are making in security—the £100 million investment to which I referred earlier when addressing the main clauses. In the course of that significant programme and of ensuring that we have funding from the Treasury for it, we have identified where we think, having done some work, the best value for money is. That is why we are pursuing those measures in the course of our programme.

The hon. Lady talked about the impact of covid on drug testing and the importance of lessons learned. I completely agree with her about the importance of looking at what we have learned in this period, and we are undertaking a broad study on that, with input from a wide range of people, including service users, third parties, and HMPPS itself. We suspended drug testing between April and June because of the social distancing measures and the lockdown within prisons, but under our current national framework prisons can reintroduce testing. Where that is done, prisons must take account of social distancing and cohorting measures. At the moment, it is too early to evaluate the impact of the changes on the drug testing programme, but we will of course be looking at all those issues in due course.

**Rob Butler:** On the point about the impact of covid, will the Minister join me in paying tribute to all the staff in HMPPS—the officers, the staff in prisons, the governors and those at HMPPS head office—for their tremendous effort to minimise and mitigate the effect of covid on the prison estate during the pandemic?

**Lucy Frazer:** I absolutely join my hon. Friend in that. He makes an important point: at HMPPS, the governors, prison officers and all the staff in the service have done such a remarkable job through extremely challenging times. The statistics show that we were looking at a significant number of deaths—2,500 to 3,500 deaths—and in the first wave, the death count was in the mid-20s. Although all those deaths are, of course, very sad, that figure is a credit to the joined-up working at every level, including with the POA. Again, I put on the record my thanks to them for the constructive way that they have engaged; I know that they are tired and that it is difficult.

I am very pleased with this morning's news about the vaccine, because we can see some light at the end of the tunnel of this very difficult period. While many people will be celebrating Christmas, many of our prison officers will still be on the wings doing their work. I pay tribute to them for all the work that they have already done and for the work that I know that they will do, unrelentingly, over the next three months. May I say that I do not find that my hon. Friend the Member for Aylesbury only does PMQs? He is a regular participant in all justice matters, and it is a pleasure to see him serving on the Committee.

I make one last point to the hon. Member for West Ham. She made some important points about who we will give the information to and how it will be used. Like her, I agree that once we collect information, we should use it to our best advantage. We will look very closely at her suggestion that the information be widely shared and see what we can do to share that data within prisons.

My understanding is that we do currently share some of the prevalence data with the POA for substances that have already been tested for. Of course, we need to ensure that we respect security and that we do the right thing in terms of policy making, but that is something that I am very happy to look at further. She also mentioned sharing data with the NHS. We will, of course, be sharing our insights with healthcare providers so that they can quicker adapt their services.

I am always happy to engage with the hon. Lady, as she knows, on these and any other matters, but I ask her to withdraw the new clause.

**Ms Brown:** Having heard the Minister's peroration, I will happily go away and think about what she has said. For now, I beg to ask leave to withdraw the motion.

*Clause, by leave, withdrawn.*

*Bill, as amended, to be reported.*

10.37 am

*Committee rose.*